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## The Week

SOME months ago it seemed safe to say that the Switchmen's Union of America was the kind of labor organization that does not go on strike. It is composed overwhelmingly of Americans, solid, conservative, intelligent. Last November, in spite of great pressure from the striking steel workers in the Pittsburgh and Chicago districts, the switchmen refused to strike and tie up the steel companies' private lines. But now these same men have mysteriously, "illegally" struck, have suddenly lit a prairie fire that jumps over night to engineers, firemen, conductors, brakemen, men belonging to quite separate organizations, to the Brotherhoods, men once as conservative, as disciplined, as American as themselves. Ten months ago they demanded reasonable and necessary wage increases. For ten months they received no hint of satisfaction. And now those months of accumulated impatience with the government and their own leaders are finding spontaneous expression. And their grievance with their leaders is that they have been unable to shake the government out of its prolonged inaction. The government has pretended an interest in the orderly development of unionism under responsible leadership, but it has neglected utterly to establish the conditions under which responsible leadership can survive.

WHEN the tinder is dry it is unimportant who drops the match. The switchmen demanded leaders who could obey their present mood and guide its demand for drastic action to success. Such leaders were not radical outsiders, but members of long standing, the small, obscure, perpetually insurgent fraction scattered through any labor organization, mere "malcontents" in ordinary times, but, when the rank and file's dissatisfaction rises to the level of their own, leaders at last. On one point their mandate from the men is clear: wages. On another they have moulded an outburst into a program and shrewdly forged the men's anger at the Brotherhood leaders into a weapon. A rival organization is launched, to include all railway workers. It is not a One Big Union plot: the railway workers are out to capture the old organizations for themselves—not for the I. W. W. The men say they want "a labor organization and not an insurance company." The "outlaw" leaders have long seen the fallacy of four distinct organizations all dealing with the same industry and the same employers. All over the country engineers, conductors, yardmen are joining an organization which no one ever heard of before, born suddenly from the old beliefs of a few men guiding the discontent of many.

THE baffling success of the outlaws threw the regular leaders into a panic. They began to roar like wounded employers, to beg the help of the big stick of Government. But they knew the grievances, the demands nearly a year overdue. Some, Lee especially, when their efforts to adjust these failed to accomplish anything, had more than a foreboding of insurgency to come. One thing apparently they did not expect: the disappearance of the bulkheads between the organizations, the unlooked for solidarity of all the men. For American railway workers, among whom pride of craft had long been traditionally, invulnerably strong, passed almost instantly from a state of craft-consciousness to one of industrial consciousness. Their revolt may be unsuccessful, but the


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leaders have had a sharp lesson. Such unresponsiveness as theirs to the mood of the rank and file has hitherto been common only in unions of mainly immigrant workers, where the rank and file's democratic impatience with remote, unrepresentative leadership has been shown in a long series of unauthorized strikes.

JOHNSON and Wood have one thing in common, the Roosevelt heritage. To strain the metaphor for what it will bear, Wood inherited the real property, Johnson the goodwill and miscellaneous personalty. Otherwise two aspirants for the same office could hardly be more unlike. Their appeal is to different sentiments, different interests, different classes. Yet in the current political comment there is a curious tendency to bracket the two men as "progressives" battling shoulder to shoulder against the "Old Guard." Thus a Washington dispatch to the Times tells us that unless Lowden and Harding sweep Illinois and Ohio "their candidacies will be unable to overcome the combined fight of Wood and Johnson, seeking the so-called independent and progressive vote." Again, the practical politicians intend "to weaken Johnson where he is strong, as in Nebraska, in the hope of killing off both Wood and Johnson by playing each against the other." During the war the bracketing method was employed with signal success to make "liberal nations" out of Imperial Japan and Tsaristic Russia. But that was propaganda.

LA FOLLETTE'S stand on the war was supposed to have eliminated him as a serious factor in American political life. La Follette himself never took so extreme a view of his case, but it was current gossip in Washington, a year or two ago, that he expected to remain under the drifts for at least a half dozen seasons. Now he emerges into the sunshine with twenty-four of the twenty-six Wisconsin delegates in his possession. Like the Johnson victory in Michigan the La Follette victory can be explained away on local grounds, if one cares to go to the trouble. No explaining in either case can offer much comfort to the Republican reaction. There is no ambiguity about the progressivism of either Johnson or La Follette. The voters of these two populous and powerful states find progressivism not abhorrent to their taste. It is a fair inference that a similar condition of mind will be strongly represented in other states in the same section.

UNIVERSAL military training is about the deadest issue in American politics. The Senate vote of 46 to 9 in favor of substituting voluntary for compulsory training in the Army Reorganization bill is an indication, though not an adequate measure, of the unpopularity of compulsory training. Some of the nine who voted against the substitution did so because they wanted to vote directly on compulsory training and kill it. Amateurs in politics, who have gravely considered the pros and cons of universal training as a matter of high national policy will be puzzled over the overwhelming adverse vote in the Senate. Were the Senators, as individuals, so thoroughly convinced that the pros are nonsense and the cons valid? Not at all. They were convinced that the plain people have their minds closed against military training. The plain people may be unenlightened, wrongheaded: but the Senators recognize, as amateurs in politics often do not, that within the range of policies that touch every household, the plain people rule like autocrats.

ACTING Secretary Post of the Department of Labor is a man who is willing to face the music of the heresy hunters. On the character of deportation proceedings he comments: "As a rule the hearings show the aliens arrested to be workingmen of good character who have never been arrested before, who are not anarchists or revolutionists, nor politically nor otherwise dangerous in any sense. It is pitiful to consider the hardships to which they and their families have been subjected during the past three or four months by arbitrary arrests, long detention in default of bail beyond the means of hardworking wage earners to give, for nothing more dangerous than affiliating with friends of their own race, country and language and without the slightest indication of sinister motive, or any unlawful act within their knowledge or intention." Mr. Post will, no doubt, be savagely denounced for speaking so frankly about the abominations practiced upon defenceless persons by administrative officials acting in the name of a people that prides itself on its love of justice. Will he be investigated? If he were the public would learn that many things can happen in America that we used to consider native to the arbitrary despotism of another world.

THOUGH the Porter resolution, if passed over the President's veto, would not reestablish orderly international relations, it would put an end to war legislation at home. That is something everybody desires. Some of the laws depending on the state of war for their constitutionality may be salutary, but we shall have to learn to live without them, and the sooner the better. But we do not need the

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Porter resolution to destroy them. A straight out repeal measure would do the job efficaciously. In challenging the majority to bring in such a measure Mr. Kitchin exhibited excellent strategy. He offered to guarantee enough Democratic votes to pass it over the President's veto. Hereafter the Republicans must assume the responsibility for keeping the obnoxious war laws alive.

BY courtesy Japan has been counted among the "liberal Powers" for almost six years. Her seizure of Vladivostok will dispel any lingering idea that she ever belonged to that category. The city was living in peace and good order, under a regime that was neither Bolshevik nor counter-revolutionary. The American soldiers had departed with a good will toward the citizens that was as well reciprocated as could be expected under the trying circumstances. The Japanese were of course going to leave, but not immediately. Hardly had the Americans sailed when the Japanese, "by a well planned surprise manoeuvre," seized the city. The population was celebrating Easter, when the Japanese covered the "Red headquarters" by machine guns, shelled the Zemstvo building and proceeded to clean up street after street, while big guns shelled the hills across the bay. By this gross act of military aggression the Japanese also succeeded in shelling the position of every honest friend of Japan in the western world. Our militarists will applaud Japan's action: it insures a hearing for every anti-Japanese rumor and justifies the project of maintaining a Pacific fleet that will quite outclass any fleet Japan can afford to build.

## The Supreme Court vs. the Supreme Court

A series of opinions has recently been handed down by the Supreme Court, which, for their immediate consequences as well as for the attitude of mind they imply, should not escape alert public discussion. Strangely enough, in the hurly-burly of these days their deeper implications have hardly caused a ripple, and yet they challenge the wisdom of leaving the ultimate law-making power of the nation to nine men. At least, they call for a consideration of the safeguards to be imposed upon the extraordinary judicial power of the Supreme Court.

We refer to five decisions, three of which raise, as Mr. Bryan would say, "human rights," and two of which involve "property rights." It would be easy enough for a doctrinaire to classify these decisions by saying that the majority of the court sustains "property rights" and decides against "human rights." But the classification is not so easy. Generalization about the Supreme Court, like all generalization, must attend detailed knowledge and interpretation. The decisions to which attention is here called furnish appropriate material for inquiry. Their especial value lies in the fact that they furnish a critique upon the work of the Supreme Court by its own members.

The first decision in the series is the now famous Abrams case, in which, it will be recalled, Mr. Justice Holmes (concurred in by Mr. Justice Brandeis ) commented upon the action of the majority of the Court in these burning words:

> In this case sentences of twenty years' imprisonment have been imposed for the publishing of two leaflets that I believe the defendants had as much right to publish as the Government has to publish the Constitution of the United States now vainly invoked by them. . . . . Only the emergency that makes it immediately dangerous to leave the correction of evil counsels to time warrants making any exception to the sweeping demand 'Congress shall make no law . . . . abridging the freedom of speech.' . . . . I regret that I cannot put into more impressive words my belief that in their conviction upon this indictment the defendants were deprived of their rights under the Constitution of the United States.

On March 1st the Supreme Court sustained convictions under the Espionage act against the editors and the business manager of the Philadelphia Tageblatt for publishing "false reports and false statements with intent to interfere with the operation or success" of the forces of the United States. (*Schaefer* v. *United States.*) The supporting proof was shocking in its triviality. Suffice it here to point out that one falsification, for which men received sentences of two and five years, was in fact a mistranslation by the government translator, and the other "false statement" which presumably interfered with the "success of the forces of the United States" was misreporting a speech by Senator La Follette prophesying that if the war were paid for by bonds the consequences would be "Brot-riots" (translated "bread-riots"), instead of "Brotreihen," (translated "bread-lines").

The real significance of such a decision is put with finality by two dissenting Justices (Brandeis and Holmes):

> To hold that such publications can be suppressed as false reports, subjects to new perils the constitutional liberty of the press, already seriously curtailed in practice under powers assumed to have been conferred upon the postal authorities. Nor will this grave danger end with the passing of the war. The constitutional right of free speech has been declared to be the same in peace and in war. In peace, too, men may differ widely as

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to what loyalty to our country demands; and an intolerant majority, swayed by passion or by fear, may be prone in the future, as it has often been in the past, to stamp as disloyal, opinions with which it disagrees. Convictions such as these, besides abridging freedom of speech, threaten freedom of thought and of belief.

Even Mr. Justice Clark, who spoke for the Court in the Abrams case, found the results of the Schaefer case too much for him. Although to him the case did not assume the proportions it had for the two dissenting Justices, even to him it seems "simply a case of flagrant mistrial likely to result in disgrace and great injustice, probably in life imprisonment for two old men, because this court hesitates to exercise the power which it undoubtedly possesses to correct, in this calmer time, errors of law which would not have been permitted but for the stress and strain of feeling prevailing in the early months of the late deplorable war."

On March 8th the Supreme Court again sustained convictions under the Espionage act, this time of a number of insignificant members of the Socialist party, for distributing a pamphlet written by Irwin St. John Tucker (*Pierce v. United States*). There was no proof that the defendants knew the contents of the pamphlet. Moreover it was proved that the distribution was begun only after one of the ablest of the Federal judges had ruled there was no legal objection to the distribution of the pamphlet. Again the convictions were had for alleged "false reports made with intent to interfere with the operation and success" of the forces of the United States. Again some of the alleged false reports were trivial, and one of the alleged "falsities" was subsequently proven to be true. The chief falsity was the statement in the pamphlet that our participation in the war was determined "by J. P. Morgan's loans to the Allies." Without in any wise associating the defendants with knowledge of the falsity of the statement, the Supreme Court sustained the conviction on the ground that "common knowledge . . . . . would have sufficed to show at least that the statements as to the causes that led to the entry of the United States into the war against Germany were grossly false; and such common knowledge went to prove also that defendants knew they were untrue."

The doctrine of constructive knowledge is surely a monstrous doctrine to invoke in criminal cases. Mr. Justice Brandeis, again with the concurrence of Mr. Justice Holmes, makes this comment upon the Court's decision:

> This so-called statement of fact—which is alleged to be false—is merely a conclusion or a deduction from facts. . . . . The cause of war—as of most human action—is not single. War is ordinarily the result of many cooperating causes, many different conditions, acts and motives. Historians rarely agree in their judgment as to what was the determining factor in a particular war, even when they write under circumstances where detachment and the availability of evidence from all sources minimizes both prejudice and other sources of error. For individuals, and classes of individuals, attach significance to those things which are significant to them. And, as the contributing causes cannot be subjected, like a chemical combination in a test tube, to qualitative and quantitative analysis so as to weigh and value the various elements, the historians differ necessarily in their judgments. One finds the determining cause of war in a great man, another in an idea, a belief, an economic necessity, a trade advantage, a sinister machination, or an accident. It is for this reason largely that men seek to interpret anew in each age, and often with each new generation, the important events in the world's history.
>
> But, even if the passages from the leaflet set forth in the third count could be deemed false statements within the meaning of the act, the convictions thereon were unjustified because evidence was wholly lacking to prove any one of the other essential elements of the crime charged. . . . . The statement mainly relied upon to sustain the conviction—that concerning the effect of our large loans to the Allies—was merely a repetition of what had been declared with great solemnity and earnestness in the Senate and in the House while the Joint Resolution was under discussion. The fact that the President had set forth in his noble address worthy grounds for our entry into the war, was not evidence that these defendants knew to be false the charge that base motives had also been operative. The assertion that the great financial interests exercise a potent, subtle and sinister influence in the important decisions of our Government had often been made by men high in authority. Mr. Wilson, himself a historian, said before he was President and repeated in the New Freedom that: 'The masters of the Government of the United States are the combined capitalists and manufacturers of the United States.' We may be convinced that the decision to enter the great war was wholly free from such base influences but we may not, because such is our belief, permit a jury to find, in the absence of evidence, that it was proved beyond a reasonable doubt that these defendants *knew* that a statement in this leaflet to the contrary was false.
>
> Nor was there a particle of evidence that these statements were made with intent to interfere with the operation or success of the military and naval forces. So far as there is any evidence bearing on the matter of intent, it is directly to the contrary. The fact that the local refused to distribute the pamphlet until Judge Rose had directed a verdict of acquittal in the Baltimore case shows that its members desired to do only that which the law permitted. . . . .
>
> The fundamental right of free men to strive for better conditions through new legislation and new institutions will not be preserved, if efforts to secure it by argument to fellow citizens may be construed as criminal incitement to disobey the existing law—merely, because the argument presented seems to those exercising judicial power to be unfair in its portrayal of existing evils, mistaken in its assumptions, unsound in reasoning or in-

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temperate in language. No objections more serious than these can, in my opinion, reasonably be made to the arguments presented in 'The Price We Pay.'

Contemporaneously with these decisions, involving the Constitutional protection of freedom of speech and of the press, the Court rendered two decisions involving vast property interests. A minority of the Court (Mr. Justice McReynolds and Mr. Justice Brandeis not participating) immunized the Steel Trust and all its works. In effect is held that the Sherman law did not have teeth sharp enough for the most powerful and most uncontrollable of our trusts. The actual decision involved legal considerations about which lawyers may well differ. But ominous, indeed, are the considerations indicated in the opinion, which evidently influenced some, though not all, of the Justices concurring in it. The Court held, in effect, that the flexible quality of equity relief makes it appropriate to consider whether or not the public interest would be furthered by granting the prayer of the government asking that conditions of legality be restored in the steel industry so far as it is controlled by the Steel Trust. The characteristic of equity jurisdiction thus enunciated by the Court is undoubtedly sound. Nevertheless it was not applied by the Court in the case of patentees who played a dog-in-the-manger policy by withholding patents from the public, and yet sought and secured injunctions against alleged infringers. In those cases the Court held that the injunction must issue as a matter of course in the protection of the property interest conveyed by a patent.

It is hard to reconcile the two cases, and still more difficult to yield to the Court's assumption that the state of trade, and the effect of the Court's decision upon foreign trade, are proper considerations of public policy for staying the Court's action in enforcing the Sherman law. The three dissenting Justices, speaking through Mr. Justice Day, explain the meaning of the decision in the Steel Trust case in these words:

> As I understand the conclusions of the court . . . . they amount to this: that these combinations . . . . although organized in plain violation and bold defiance of the provisions of the [Sherman] act, nevertheless are immune from a decree effectually ending the combinations and putting it out of their power to attain the unlawful purposes sought, because of some reasons of public policy requiring such conclusion. I know of no public policy which sanctions a violation of the law, nor of any inconvenience to trade, domestic or foreign, which should have the effect of placing combinations, which have been able to thus organize one of the greatest industries of the country in defiance of law, in an impregnable position above the control of the law forbidding such combinations. Such a conclusion does violence to the policy which the law was intended to enforce, runs counter to the decisions of the court, and necessarily results in a practical nullification of the act itself.

In the Steel Trust case the Court was merely construing a statute. Such a construction is, of course, remediable by future legislation. A totally different consequence follows from the decision of the Court in the stock dividend case. It took nearly twenty years to change by amendment the startling decision in the famous Pollock v. Farmers Loan & Trust Company case, decided by a majority of one, holding that an income tax is a "direct tax" within the constitutional provision requiring apportionment according to population. The Court now holds that the broad terms of the Sixteenth Amendment empowering Congress to lay taxes "on incomes from whatever source derived" does not permit taxing dividends representing profits, although it would apply to cash dividends issued for the purpose of buying therewith such stock dividends. As a matter of practice whether cash or stock dividends are issued, is a question of internal corporate management. Yet on such a technical distinction the Constitution of a powerful nation is made to turn. Again let members of the Court themselves—for four out of the five could not follow the metaphysical windings of the majority opinion—interpret the work of the Court:

> If stock dividends representing profits are held exempt from taxation under the Sixteenth Amendment the owners of the most successful business in America will, as the facts in this case illustrate, be able to escape taxation on a large part of what is actually their income.

How quickly this prophecy was fulfilled is indicated by the volume of stock dividends that have been declared since the Court delivered this opinion on March 8th. Mr. Justice Brandeis continues "that such a result was intended by the people of the United States when adopting the Sixteenth Amendment is inconceivable." And the same conviction is expressed with pungency by Mr. Justice Holmes:

> I think that the word incomes in the Sixteenth Amendment should be read in 'a sense most obvious to the common understanding at the time of its adoption.' . . . . For it was for public adoption that it was proposed. . . . . The known purpose of this Amendment was to get rid of nice questions as to what might be direct taxes, and I cannot doubt that most people not lawyers would suppose when they voted for it that they put a question like the present to rest.

Res ipsa loquitur, the lawyers say. Surely these decisions speak for themselves. But they speak diverse and conflicting meanings, and their significance will depend, to a large extent, upon the prepossessions, the historical perspective, the legal equipment of the interpreter. It will not do to say that they prove the Supreme Court re-

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spects "property rights" more than "human rights," for while Mr. Justice Day speaks with hot resentment against the Court's opinion in the Steel Trust case, he acquiesces in the Court's impairment of freedom of speech, and in the encouragement of conditions that make against freedom of thought. Nor do these cases prove the economic interpretation of the Supreme Court's work, for while Mr. Justice Pitney gives an interpretation to the Sixteenth Amendment which pleases the stock market and would delight the Schoolmen, he joins the minority in reprobating the organization of the Steel Trust and calling for its dissolution. Equally unsound is it to say, however, that the Supreme Court does not manifest a different attitude towards the acquisition and protection of property than towards other aspects of human liberty. No candid student of Supreme Court decisions can say that some of its members do not, unconsciously at least, illustrate the economic interpretation of history. But the causes are more manifold and more complicated than that analysis implies. Fundamental temperaments—whatever complex of qualities "temperament" may mean—play their part in the Supreme Court as well as elsewhere. Some men have imagination and some have not, whether they be Supreme Court Justices or writers of fiction.

The influences of these two radically different types of mind, the imaginative and the unimaginative, are revealed in all judicial history, and have played their part since the foundation of the Supreme Court. Naturally, the less imaginative the mind the more it is subject to the undertow of its own habits, its own experience, its own sense of what is right. Inevitably, therefore, intellectual limitations of the individual become constitutional limitations imposed upon the entire country.

The Supreme Court's power as the ultimate lawgiver puts too heavy a strain upon ordinary men. Since it is, as we are constantly told, an extraordinary power it demands extraordinary men to exercise it. We shall never face the issues until there is a general recognition of the fact that the Supreme Court in cases of public concern is not exercising ordinary judicial powers but powers that demand qualities deeper and different from those possessed by ordinary judges. They are the deeper problems of statesmanship. They require for their disposition either men like Chief Justice Marshall, the late Mr. Justice Moody, or Mr. Justice Hughes, who came to the Court after wide and far-sighted experience in affairs; or that rarer type, men like Mr. Justice Holmes, who are gifted with imagination to transcend their own limited experience. Good faith and devoted public service are something, but not enough for the functions exercised by the Supreme Court. Particularly in this day and generation Government must be sensitive and flexible to a shifting and complicated world, and the questions which the recent Supreme Court decisions insistently raise sooner or later face all institutions —Does it work? Is it worth more than it costs?

At least there should be an appreciation of the true quality of the issues which come before the Court, of the qualities of mind and the statesman's vision needed for their solution, of the means for developing an available source of supply for membership on the Court, and, if the present jurisdiction of the Court is to continue, of the needed safeguards against undue risks from the exercise of the power of the Court. It is idle to sneer. It is futile to find new cynicism in Mr. Dooley's observation that "the Supreme Coort follows the illiction returns." Still less will it do to regard the Supreme Court as a sacred priesthood free from criticism. On the contrary, an alert and informed public opinion in regard to its work is indispensable to any comprehensive understanding of our national problems.

## The Politics of the Hoover Boom

IF Mr. Hoover's recent statements were not to be taken more seriously than the average political announcement, it would be difficult to avoid the conclusion that he had been eliminated as a serious factor. His popular strength lay in the unorganized independent vote of the country. His political strength lay in the fact that he offered hope to the Democrats and a threat to the Republican bosses. Nominated by the Democrats he might have snatched victory out of almost certain defeat. This fact constituted his greatest asset in the calculation of the Republicans. By nominating him themselves, they would have been utterly sure of the final result. But now since the Democrats have nothing more to hope from him, the Republicans have nothing more to fear from him. All this is on the assumption that his statements are not to be taken very sertously. For on that assumption, he is pocketed. If Mr. Hoover is to be regarded as a loyal Republican, the convention is not compelled to bid for the support of Mr. Hoover's following. That following has no way of expressing itself as a unit, because the leader has closed one of the two alternatives.

But Mr. Hoover has been in the habit of meaning what he says, and what he says is not so simple as this analysis assumes. It is true that Mr. Hoover will accept only a Republican nomination. It is also true that he has said he will not support the Re-

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publican party unless it adopts liberal policies and is controlled by men who assure the execution of those policies. Taken literally, this would mean that Mr. Hoover will not consent to accept the nomination regardless of principle simply to break a deadlock; it would also mean that in case the convention nominated a reactionary he would feel free to bolt and join with the independent voters, not as a candidate, but as a citizen, in some move to defeat a reactionary.

The possibilities of the Hoover movement would seem to be these: As a hitched Republican his chances are practically nil; as an indirect Republican, he can be nominated only by wire pulling at the cost of his principles; as a genuine independent, only temporarily affiliated with the Republican party, his chances are in direct proportion to the ardor and unity of his non-partisan supporters and his and their readiness to go out of the Republican party. Mr. Hoover's strength is independent strength; it cannot be made to count if it is tied.

Already some of that strength has oozed out, and more of it will ooze out if Mr. Hoover's political friends continue to proceed on the illusion that they can wheedle the Republican convention into doing what it does not wish to do. For even if they achieved a miracle, even if they convinced the Republican managers that Mr. Hoover is a good safe compromise between Senator Johnson and General Wood, what would they have accomplished? They would have presented Mr. Hoover with one of those hideous political choices between ideals and success from which few men can recover. He would either have to decline the nomination on principle, or accept an unprincipled nomination.

That is unfair to a man whose whole public career has been a demonstration of the possibility of effective application of principle to great affairs. Mr. Hoover is much too valuable a person to be caught in a political jam. There is no way to nominate him but the large-minded way. That way is for him to declare in unmistakable language the progressive principles to which he holds; for his followers to carry those principles to the electorate, and to stake everything upon them. Everything, including the Republican nomination and party loyalty. In such a contest they cannot lose. If they carry the convention, Mr. Hoover emerges a free candidate. If they fail to carry it, they have advanced the liberal cause by education.

But the kind of campaign that is now going on leads nowhere except to defeat or humiliation. It is at this moment a perfect sample of goo-goo politics, well-meaning, right-minded, but tepid, timid, and thoughtless. As a popular movement, it will at the present rate make no more impression on the hide of the elephant than a cooing dove. As an "inside" movement of wire pullers it can succeed only at a devastating price.

## Diplomacy on the Rhine

DIPLOMACY is again playing with fire. That is the one safe conclusion as to the Ruhr-Frankfurt imbroglio. There is plenty of room for difference of opinion on the original question whether or not the Germans should have been permitted to send forces beyond the stipulated limit into the neutral zone. There is also room for difference of opinion as to the justice and expediency of French action in seizing German cities, as guarantees. What can not be questioned at all is that the German revolutionists and the German and French governments have all been playing a ruthless game of diplomacy. Their immediate action is reaching beyond to greater events, which they hope may advance their several purposes.

First, as to the German revolutionists. They were quite aware that there was little chance of overthrowing the government by a direct attack. However much revolutionary discontent there may be in Germany, it has not yet been sufficiently concentrated to overthrow the existing regime. But along the Rhine the revolutionists enjoyed the signal advantage of what had been set up as a zone of safety by the Treaty of Versailles. By convention the German forces that might be sent into this zone were restricted to 25,000 men, and this number was to be reduced, in default of a renewed convention, on April 10th. In the populous neutral zone it was easily possible to organize a force of men well trained in arms that the government could not safely attack with its permitted number of troops. How great a force they actually organized we do not yet know. Berlin, with every ground for exaggeration, placed it at above 100,000. Paris, with the opposing ground, placed it much lower. But it is safe to concede a force that would discourage attack by small bodies of soldiers. The revolutionary leaders knew well that the government would try to get permission to use larger forces, and failing permission, might nevertheless try to use them. They knew that this would create a crisis in Franco-German relations. And they thought they might fish something out of the troubled waters.

Second, as to the German manoeuvres. It is not clear that the government had exhausted every possible means of securing a peaceful settlement with the revolutionists. According to Berlin, conciliation

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was impossible because the revolutionists were Red Bolsheviki, who would be content with nothing less than a communistic state. Reports of terrible atrocities were published and sent abroad, to establish the necessity of drastic action. According to Paris the revolutionists are neither very Red nor atrocious, but simply workingmen outraged by the governments flabby handling of the Kapp coup and determined to stand against resurgent militarism. France, it is incredible to report, was fearful of a White Terror along the Rhine. It appears safest to believe neither Berlin nor Paris, without reserve. There is too much method in their publicity. The selection of General von Watter to do the work of suppression and the character of his proclamations indicate a disposition on the part of the government to exhibit "strength" where common sense would have been more effective to the immediate purpose.

But had not the German government an ulterior purpose? That appears plausible, at any rate. It is still popular, internationally, to suppress Bolsheviki. It could be done only by employing greater forces in the neutral zone than the Treaty permitted. France would in all likelihood object. There was a good chance that she might be overruled. If she accepted the decision of the other signatory Powers, a precedent would have been set for overruling France on other points of Treaty enforcement—notably on the reduction of the German army, just now due. If France refused to abide by the decision of the other signatory Powers and proceeded to enforce the Treaty on her own account, a manifest rift in the alliance would have been produced. A first step would have been taken toward the isolation of France. It is difficult to exaggerate the value the Germans see in such isolation. They believe that in spite of what they have suffered they will ultimately prove more than a match for France, single-handed. Through that rift they see a ray of light on their future destiny.

Observe how they proceeded. First, they asked permission to send forces into the neutral zone. Apparently they asked permission of Millerand, not as representative of the signatory Powers but as representative of France. That was polite. France was consulted as the Power immediately interested. It was not diplomatically "correct." Not France, but the principal signatory Powers had the right to grant or refuse this request. France stipulated guarantees, the occupation of certain German cities, which Germany refused. Then followed a more or less cloudy exchange of diplomatic inquiries, extending even to Washington, the net result of which was that no Power but France objected to the German government's putting down its own Bolsheviki, or saw the necessity of guarantees. This does not mean that Germany's request had been granted. It merely indicated the complexion of international opinion, to the satisfaction of the Germans.

The next scene in the drama was the actual sending of German troops into the neutral zone. The first reports made this violation of the Treaty appear accidental. The government troops were chasing revolutionists outside of the neutral zone and in their zeal disregarded the line. Millerand warned them not to come any further. They came, however, by express orders from Berlin. Thereupon the French promptly crossed the Rhine and occupied Frankfurt and other cities. One technical violation of the Treaty, they supposed, would justify another.

To understand French policy in the matter it is necessary to bear in mind that the Treaty means more to the French than to any other of the great Powers. The British government appears never to have taken the Treaty seriously. They wanted a document that looked well in print, at the time, and expected it to adjust itself to the developing needs of the time through that alternation of action and inaction that illustrates the British gift for compromise. The American commissioners accepted the Treaty as a magnificent opportunity for revision through the League. But the French meant every word and comma in it. They really meant to make Germany pay and work and disarm. They meant to punish her war criminals. And if Germany failed in any point they expected the signatory Powers to join them in exacting compensation. In the course of recent months they have discovered how lonely they were in their intentions. Germany was to deliver a certain amount of coal monthly. In no single month has she delivered the stipulated amount. She could not, but she might have delivered more if the other Powers had been willing to join in pressure upon her. The demand for the surrender of the war prisoners was defied. Absolutely nothing happened. As for reparations, Germany is paying only the least fraction of the French expectations. The expenditures of France run to fifty billions of francs for the current year. That is a colossal sum, impossible to raise through taxation. But Germany was counted on to pay more than twenty billion of it. Apparently she will do nothing of the kind. What wonder is it that France chafes and yearns for a mandate to enforce the Treaty on her own account? In the invasion of the neutral zone by German government troops she had an opportunity for establishing a precedent, and seized it. The matter of it is easily comprehensible; the manner is not. What possessed France to send African troops into Frankfurt, to fire with a machine gun upon

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a crowd of citizens? They jeered, asserts the French commander, by orders from Berlin. Granted. The Prussians of pre-war days would have behaved precisely so, having no appreciation of the psychology of civilized man.

But that incident may be passed by as merely symptomatic of the mental degeneracy that attends militarism, whether espoused by choice or forced upon a people. At the moment of the Frankfurt occupation the French stood dangerously isolated. They had hoped for a legitimation of their proceedings after the fact. To that end they propose to put in claims upon Germany for the expenses of occupation. Such claims, countersigned by the other signatories, would be tantamount to legitimation. Apparently they are making no progress in this direction. They have appealed directly for approval. Belgium, of course, has declared her solidarity, but the only approval that counts is that of Britain. And the British will approve only on condition that in future France submit any action she may contemplate in enforcing the Treaty to the consent of the principal signatory Powers as a group. But that would be entirely to destroy the value of the present action, as a precedent.

And the precedent was all that France was after. The direct menace to France of German government troops in the neutral zone amounted to nothing at all. All the troops Germany could muster now would be impotent to effect a successful crossing of the Rhine, in the face of the overwhelming military superiority of France. But here was a chance of establishing the principle that any one of the Allies—that is, France—is competent to act alone in cases vitally concerning her. The Treaty did not absolutely exclude this principle. Now Lloyd George demands that it shall be absolutely excluded. Millerand attempted to evade by giving the assurance that he can conceive of no such action in future. Of course the evasion could not succeed because the British government knows exactly how vital the point is.

For the blank checks of the Peace Treaty, which the British never meant to have presented, will some day be presented by the French with such figures written in as to insure their rejection. And then, if France must wait upon common action, nothing will happen. But if she is free to act alone she will proceed straightway to collect, through the annexation of German soil up to the Rhine. If Germany ever attempted to recover her lost territories by war, England as a guarantor of the peace would be morally bound to come in. This risk of war could be removed only by the development by France of a vast permanent army. Such an army is not out of the question. The French people may be hard to make over into instinctive militarists, but France has an inexhaustible supply of black soldiers in her African possessions. She has already begun to introduce the system of conscription there.

But a thoroughly militarized nation just across the Channel from England does not bode well for British security nor for the peace of the world. Better such an adjustment of the victors' claims upon Germany as will reduce stresses on the continent and remove the impulse to extreme militarism, whether among friends or foes. The key to such adjustment the British have found in the provisions of the Treaty leaving enforcement to the principal signatory Powers, not to the several Powers acting on their own responsibility. They can not possibly permit such a key to be thrown away.

But the net outcome of the whole transaction appears to be that Germany wins. In so far as France yields to the British demands the Germans may proceed confidently to create one practical situation after another which makes for Treaty revision. In so far as France does not yield, the grand alliance is dissolved. France may send her troops as far as she likes into German territory. No Power will oppose her. But she will gain no permanent results and in the end she will find herself standing alone.

That is a natural consequence of a blank check treaty which means one thing to one nation, another to another, and nothing recommending itself to reason or morality. The present crisis will be evened out, but other crises are bound to arise, until the grand alliance is altogether destroyed or a new international body overhauls the entire Treaty and transforms it into a contract all of whose terms are explicit and endurable.

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# A "White" Guard in Germany

THERE is a crusted old anecdote about the military mind which has amused many generations of students. A wag met a respectable old veteran carrying home his dinner from a cookshop. He gave the command "'tention" (to use the abbreviation current in the English army), whereupon the old gentleman's arms went down smartly to his side (the tip of the second finger should touch the trousers' seam), and his dinner fell clattering to the ground. The story was invented by a psychologist to illustrate the nature of reflex action, but it serves even better to reveal the automatism of the well-drilled soldier. Whole armies, whole nations have lost their dinners in precisely this way. The Kaiser said "'tention" in August 1914, and the German people is still looking helplessly for the dinner that dropped from its obedient hands. We have had another illustration this week of the working of military automatism in Dr. von Kapp's inglorious coup d'état. It proved two things, the mechanical solidarity of German troops when any general says "'tention," and the more rational solidarity of the German masses to resist them. The behavior of the people constitutes a new fact: the conduct of the troops is in line with all their traditions. Everyone remembers the gay story of the tailor of Köpenick. He dressed himself up in a lieutenant's uniform, called out the guard of the nearest garrison, marched on the Town Hall of Köpenick, arrested the trembling burgomaster, emptied the municipal cash box, and strode off with the money in his pocket, while the guard stood at the salute. What the tailor of Köpenick did ten years ago, Herr von Kapp and General von Lüttwitz did on a larger scale this week. The amazing thing is not that monarchist generals and agitators should conspire against the German Republic. That was to be expected. The French Republic was subject for a whole generation after 1870 to a long series of such conspiracies, and some of them seemed much nearer to success than the Berlin adventure ever was. The important fact is that for five days the whole military force of Prussia was at the disposal of a third rate general and a still obscurer official, who felt moved to declare themselves the rulers of sixty millions of their fellow creatures. Some details of the curious story are still obscure, but there seems to be no doubt that, with very few exceptions, the regular army (Reichswehr) and the gendarmerie (Sicherheitswehr) throughout North Germany went over automatically to the coup d'état. It is equally obvious that in so doing they obeyed a local public opinion so narrow, so little national, that one may fairly say of it that it reigned only within their barracks. That differentiates this German escapade from the French models. When Boulanger shrank at the last moment from his coup d'état he had all Paris behind him. I saw Déroulède's theatrical attempt in 1899 to induce General Roget to march on the Elysée. The mob was surging round his brown charger, and if the general had yielded to temptation, a crowd of tens of thousands of wildly excited civilians would have pushed him into power on the spot. This German phenomenon is not, as French militarism often was, a phase of mob psychology and perverted democracy. It is sheer Pretorianism.

The episode raises in an acute form the whole problem of the relation of armed force to democracy. It is not one to which the English-speaking peoples have given much attention in modern times. The old Whigs, it is true, were intensely suspicious of standing professional armies, but when the English people finally won in its long struggle with the Crown, this dread of an army bound in loyalty to the king, vanished from our politics and even from our memories. We are in England so remote from the thought either of revolution or of forcible reaction, that it seldom occurs even to an English Socialist to regard our army as a possible danger. The result was, that as few people in England have as yet any vivid mental picture of continental conditions, the provisions in the Peace Treaties which regulated the future armaments of the Central Powers were almost the only part of them which escaped serious criticism. Everyone was glad that conscription had disappeared. No one stopped to inquire whether the new long-service professional armies might not become the instrument of economic or dynastic reaction. No one considered the solution which the democratic and Socialist parties in Germany would have preferred—a citizen militia on the Swiss system. It was Mr. Lloyd George who imposed this typically Anglo-Saxon solution on the Peace Conference, and in England, at least, it was one of his most popular achievements. I was, I think, the solitary critic of this decision in the English press but events, I venture to think, have justified me.

The reader may object that no great harm has been done by the Kapp-Lüttwitz coup d'état. It has failed ignominiously and has thereby proved the impotence even of half a million well-armed men to coerce a nation. It was, however, a wretchedly led

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adventure. Von Kapp was evidently a sorry sort of dictator. He lacked the resolution to compel the banks to honor his drafts—one can imagine how a "Red" dictator would have solved that little difficulty. If Hindenburg or even Helfferich had come forward to support him, the adventure might have ended otherwise. It remains to be seen, however, whether the coup d'état really has failed. On the news which is available in London as I write, the solution looks like a compromise in which the reaction has scored all the essential points—early elections, a remodelled ministry, and, above all, the direct election of the President by the people. Even if a few generals are cashiered, the Reichswehr and the Sicherheitswehr which supported the coup almost to a man, will remain substantially what they were, a Pretorian Guard, which keeps alive the stiffest traditions of Prussian militarism. Again, even if one takes the cheerful view that the coup failed, the fact remains that it was defeated by the general strike of the German workmen. One may praise their solidarity, their courage and their endurance, but the general strike is not the safest or the most congenial expression of Parliamentary democracy. For its success it requires only the wholehearted support of railwaymen, municipal employees and coal-miners. What we have witnessed was a struggle between an armed caste, and the organized proletariat. The mass of the nation looked on passively. It remains to be seen whether the proletariat, which considers itself the victor in this struggle, will be satisfied with the very meagre results which have been achieved. That will be clear before this article has crossed the Atlantic. Let us attempt, meanwhile, to state the problem for democracy in terms of mechanics. Whatever be the exact outcome of this affair, it is fairly clear that Germany must still reckon with two disturbing possibilities. Her little long-term professional army may again repeat its exploit, the next time perhaps under bolder leadership. Her proletariat is evidently solid enough to use the general strike for ends rather more radical than the defense of the existing order. Which is the stronger weapon, the machine gun or the strike? I think the former, but neither is a weapon, when a minority wields it, consistent with Parliamentary democracy.

The prevalent assumption in English-speaking countries is that a paid force, be it an army, a gendarmerie, or a police, can always be recruited anywhere, for the narrow purpose of maintaining order and supporting the legally constituted authorities. That is in England a safe assumption. The type of man who enters the regular army or the police cares as a rule so little for ideas, that he will always do "his duty" without question. The class war moreover is with us so little acute, that as yet the opinions even of the officers may be disregarded. How long this will last is another matter. In Central Europe hunger, the blockade, and the working of ideas have made a cleavage so deep that a neutral force which would support any regular authority, merely because it was regular, is almost unthinkable, a force, that is to say, which would show an equally wooden loyalty to a Socialist or a Pan-German ministry, provided it has the Reichstag behind it. In Vienna, the Socialist leaders, much abler men than their North-German confrères, solved their problem in an adroit and original fashion. They converted what was in its origins a body of Socialist volunteers into a regularly constituted constitutional force. The Austrian Volkswehr happens to be composed, men and officers alike, almost exclusively of moderate Socialists, though it is the legal, paid army of the Republic. It idolizes the Socialist leaders, and may be trusted to resist reaction and communism alike. It is in turn highly popular in this city, where 70 per cent of the electors vote Socialist. I saw it a year ago repressing a rather serious communist riot, in which a very angry mob had begun to burn down the Parliament House. It did not fire a shot. It did not even fix bayonets. An officer first made an infinitely tactful and very clever speech to the crowd. Then very slowly the men advanced and dispersed the crowd by sheer politeness. "Comrade, a few steps back, please," or "Comrade, do you mind just stepping over those railings?" So they spoke to the furious workmen, who a few minutes before had been fighting (with forty or fifty casualties) against the mounted police, who do not happen to be a Socialist force. These tactics were successful. The Viennese Volkswehr can keep order in a Socialist city because it is a Socialist force. If a clerical ministry came into power, this same Volkswehr would probably join the crowd in making a revolution.

The origin of the German Reichswehr was in sharp contrast to that of this Viennese force. It has grown out of the "free corps" which Herr Noske improvised early last year to cope with the armed revolt of "Spartacus." The regular army had been demobilized, and Liebknecht's rising found the Republic almost without troops. Two types of men flocked to these free corps. First there were unemployed professional officers, the keenest men of the old Prussian army, enthusiasts for their profession, steeped in the old habits of thought. They loved arms, hated Socialists, and had the arrière pensée of preparing the future war of revenge. Many of these officers went into the ranks, as also did a numerous body of students

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and many a hardened old Feldwebel. The other type was the light-hearted, light-minded youth, big country lads, idle town bravos, who cared little or nothing for the cause, but in this half-starved world of the unemployed, valued good pay, good food and good clothes. The moment that this force began to deal with the angry, desperate, starving working class in its ultra-Prussian manner, murdering captives, shooting prisoners, breaking up orderly meetings, it was of course ostracized by the organized workmen. A savage feud divided them, and no man of working-class origin who had any regard for his class could have remained within this force.

As the months went by, and the army itself began to be reduced to satisfy the Peace Treaty, a further and more deliberate process of selection came into play. The Staff meanwhile had become an active center of the most various intrigues. It was Ludendorff's old government within the government revived. It had its press agents, its political agents, even its quasi-diplomatic agents. It intrigued with the Russian Whites, it intrigued with the Allied Military Missions, it intrigued with the Hungarian Whites, it even intrigued with the Reds.

When I was in Berlin a year ago, a very highly placed personage on this staff actually came to me with a scheme to secure Allied support for an all-Socialistic ministry. It had its finger on every lever. It managed Herr Noske so adroitly that this very obstinate, and coarse-grained man, absorbed in his war on the Reds, refused to see the even more patent danger from the Whites. Under his fixed eyes, the Staff carried out a wholesale purge of the army. It had to be reduced drastically in numbers. The batteries and battalions which were disbanded were of course those in which a certain Republican sentiment still prevailed. The process of converting a police army into a select White Guard has been ridiculously complete. If Herr Noske had been a traitor, as he obviously was not, it could hardly have been more complete. A cleverer man might have managed rather better. None the less, I believe that this evolution was inevitable. Any armed force recruited today in Central Europe for twelve years' service will be potentially a White Guard. The average man in Central Europe is so weary of discipline and uniforms, so full of distrust for the officer caste, so disgusted with the whole military apparatus and ideology, that he will not enlist in a long-service force. A regular army attracts only those who still live in the past, the men with atavistic mentalities, the men in short who would revive the past. The average worker may, indeed, be induced by hunger and despair and anger to fight under the Red banner, but he does not join a Reichswehr. In Hungary, in Germany, and doubtless in Bulgaria also we shall find that our invention of the professional army has buttressed reaction, and betrayed democracy. It may be the engine of a dynastic military revanche. It may, on the contrary, force on, by the counter working of the indignant masses, a definitely Red revolution.

Like all who have travelled in Europe since the war ended, the feeling came to me that I had seen society stripped bare, and realized, as never before, the stark elements of force that govern it. Enforced disarmament is no remedy, if it places power in the hands of those who can control these inevitably reactionary White armies. In spite of its apparent success in this last instance, I doubt the efficacy of the political strike as a check on Pretorian Guards. In Central Europe today, where few towns have food for a week at a time, it must break down, unless it achieves an instantaneous result.

The White Guard rules not merely by actual outbreaks, but by steady intimidation. The threat is always there. It cannot be kept within bounds. It is allowed in Hungary to murder with impunity and in Prussia to break meetings. At every turn in politics, when he taxes or legislates, the stateman must beware lest he provoke too far the patience of those whom his White Guard will obey. So to govern that you shall never provoke either a Pretorian mutiny, or a proletarian strike is an impossible exercise in political gymnastics. In the end society will seek equilibrium and stability in a strong dictatorship, which may be either White or Red.

Is there a way of escape? The classical answer may be the true answer. A militia which contains every able-bodied citizen of every class may be the only form in which democracy can in the end tolerate the organization of force. Conscript armies are dangerous, partly because they require the maintenance of a large professional officer caste which lives for arms, and partly because the "active" army consists of young lads so immature that they will always obey their officers. It is the older men, from twenty-five to thirty-five, with their formed characters and definite civilian outlook, who give stability to a militia. Its officers are also in Switzerland, with the exception of a few experts, civilians of all classes and opinions, whose minds have never been militarized. A militia veteran would not drop his dinner if you happened to say "'tention," or even the still curter "'shon." A militia is, in short, an expedient by which the dis-

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tribution of force in a state must roughly correspond to the public opinion of the whole body of citizens. If it goes White or Red, it will be because the whole mind of the community has blanched or blushed.

There can be absolutely no prospect of a successful "putch" or "coup," while a militia retains its vitality. In the early days of the German Revolution everyone was ready for this solution, and left to itself, the German Republic would have created exactly such a force as Jaurès sketched in L'Armée Nouvelle. The Allies vetoed that solution, and, in so doing, made the fatal error of judging Continental by Anglo-Saxon conditions.

But, surely, the reader will object, a German militia with its formidable numbers would be a danger to Europe's peace? Less of a danger, incomparably less, than these White armies governed by men who live for warfare. If there were space to tell in detail even the little one may glean by reading German newspapers, about the recent intrigues of the German Reichswehr Staff, with White Russia and Hungary, with Kolchak and Horthy, no one, I think, would care to trust the pacifism of the professional soldier. Of one thing I am morally sure. No force on earth could drag a militia composed of average men who went through this war, into wanton repetition of it.

Nor will the boys who have survived the blockade be much more warlike. I think of a scene which I watched from an Austrian train on the eve of the last election. A long file of men walked slowly down it, as it stood in the station of Linz. They were carrying posters with moving pacifist appeals and cartoons drawn by a skilful artist. "Our dead call on you," ran one of them, "to abolish war." That procession was composed of ex-soldiers, all of them sturdy young men, and all of them still clad in their gray uniforms. A militia of those men would make no wars. It is the picked bravos of the White Guards who will do that.

H. N. Brailsford.

## Ship Song

Catch a song,
And catch it spry,
Catch it alive
So it won't sing dry!

Use wet words
Of sea and foam
String the words to a salty tune,
And sing them till your ship comes home—
Sing! till your ship comes sailing home.

Jeannette Derby.

## Is Prohibition Lawful?

THE arguments for and against prohibition, and the prejudices which have been engendered on both sides during the prohibition campaign, have largely obscured in the public mind the constitutional and political arguments for and against the eighteenth amendment. This result is the more natural as the constitutional arguments on the amendment have been for the most part presented in legal periodicals and in lawyers' briefs. As a matter of fact the constitutional and political arguments with regard to the amendment have nothing inherently to do with prohibition. They are, however, entitled to as much attention as are the moral and economic considerations advanced by the prohibitionists and their opponents.

One is at first struck with surprise at the idea of a constitutional amendment being unconstitutional, if the steps provided in the Constitution for the adoption of amendments have been complied with. Yet the eighteenth amendment is attacked as unconstitutional, quite aside from the methods of its adoption. It is most earnestly asserted that in two important respects it fails to conform to the term "amendment," as used in article five of the federal Constitution. It is also asserted that in certain essential particulars the method of adoption of this latest amendment did not conform to the constitutional requirements. These latter contentions deal with technicalities of no great public interest and they will not be here considered.

The Supreme Court of the United States has said that "the Constitution in all its parts looks to an indestructible nation composed of indestructible states." The opponents of the eighteenth amendment contend that this conception is the very basis of our union, accepted by the people of the United States and the people of each state in adopting the Constitution, and that the power of amendment was only delegated to Congress, acting with the legislatures or conventions in three-fourths of the states, to make alterations and improvements for the fulfillment of that purpose; that any attempt to change that fundamental basis of union is beyond the power delegated by the people by the fifth article of the Constitution, and could become effective as to the federal government only by the consent of the people of the United States, and as to each state only by the consent of the people of that state. The conclusion from this argument is that the delegated power of amending the federal Constitution does not extend to any provisions of a class that could lead to the destruction of the United States or the individual states.

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The so-called "police power" of government includes the power to legislate for the protection of the safety, health, morals and economic welfare of the governed. That no such broad power was originally delegated to the federal government by the states, and that such general power was under the Constitution reserved to the states, are propositions which have been universally accepted. Clearly prohibition is a subject which falls under the police power, and, without the eighteenth amendment, is a subject which could be legislated upon only by the states, except in connection with interstate commerce over which Congress has complete control. May so much of the police power as is necessary to control the manufacture, sale and transportation of intoxicating liquors be transferred from the states to the federal government by constitutional amendment, or may it only be transferred by each state to the federal government by the consent of the people of that state? The argument against the eighteenth amendment is that it attempts to transfer part of the police power from the states to the federal government; that if so much of the police power can be transferred, the whole of the police power can be transferred; that if all of the police power can be so transferred such other fundamental powers as that of taxation can in the same way be taken from the states and given to the federal government; and so by successive amendments the state governments can be substantially destroyed as separate sovereignties. The opponents of the eighteenth amendment, being convinced that it is beyond the amending power to destroy by such instrumentality the state or national government, insist that it is beyond the power delegated to Congress and the legislatures of three-fourths of the states to adopt the eighteenth amendment, which is but a first step in transferring the sovereign power of the states to the central government. It is also argued, upon an analysis of the first seventeen amendments, that there is no precedent for the transfer by such means of the police power from the states to the federal government.

Judge Hughes makes two answers to this attack upon the constitutionality of the eighteenth amendment. In the first place he argues that the Supreme Court has no jurisdiction in such a case—that this attack involves purely a question of the political rights of a state. The Supreme Court, in the period immediately following the Civil War, refused to entertain the question whether the "Reconstruction Acts" unconstitutionally threatened the existence of a state, declaring it to be a purely political question as to which it had no jurisdiction. But in that case no rights of private property were involved, as the court was careful to point out. It can hardly be said to be certain that suits will not be entertained, based upon the alleged infringement of property rights, simply because in determining those property rights political rights of a state must be passed upon. There may in this respect be a difference between the actions brought by the state of Rhode Island, and those prosecuted by the brewers.

Judge Hughes's second answer is to point to the records of the Constitutional Convention in an effort to show that the framers of the Constitution did not intend to construct an unalterable scheme of government, in which only the details could be changed and developed by amendment, but that they meant to leave a way, though one not too easy, for radical changes to meet new conditions. Among interesting comments by members of the convention on the subject of amendments, is found a direct motion by Mr. Sherman of Connecticut to annex to the end of the article dealing with amendments the proviso "that no state shall without its consent be affected in its internal police." This motion was rejected by the convention.

The second main ground upon which the eighteenth amendment is attacked is that it is not an "amendment" at all, but is mere legislation. The argument is that the Constitution is a framework of government, and an amendment to it must amend that framework or the powers of government created by it. A provision that after a certain date Congress should have exclusive power to legislate with regard to the manufacture, sale and transportation of intoxicating liquors, would clearly be an amendment to the Constitution (albeit subject to the above objection as to shifting a part of the police power from the states to the federal government), for it would effect a change in the powers of government. But the eighteenth amendment does nothing of that kind; instead it directly prohibits the manufacture, sale or transportation of intoxicating liquors. It lays down a rule of conduct for individuals, not for the government. The laying down of rules of conduct for individuals is legislation, and it is claimed that when the people of the United States adopted the fifth article of the Constitution they did not delegate to Congress, with the concurrence of the legislatures of three-fourths of the states, the power to legislate. It is pointed out that if the eighteenth amendment is within the power delegated by the people under the article of the Constitution as to amendments, we have in this country three possible forms of legislation, namely, legislation by Congress for the whole country under the limitations fixed by the federal Constitution; legislation by each state legislature for each state under the limitations fixed by

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the Constitution of each state and by the federal Constitution; and legislation by two-thirds of Congress and the legislatures (or conventions) in three-fourths of the states, which legislation is controlled by no constitutional limitations, state or federal, and is binding in states which do not ratify, as well as in states which do.

Those who support the prohibition amendment answer briefly that the argument just outlined is merely an argument as to the political expediency and wisdom of the form of amendment which was adopted; that courts will not consider the wisdom or expediency of legislation, but only the question whether such legislation is *clearly* in conflict with the Constitution; and that the same must be true when the validity of an amendment is called in question. They claim that there is no prohibition of such form of amendment in the federal Constitution, and that the records of the Constitutional Convention show that the fifth article of the Constitution was intended to carry the broadest power to alter the whole constitutional scheme. They further point specifically to the thirteenth amendment, which declares that "Neither slavery nor involuntary servitude . . . . shall exist within the United States," as an amendment which does not deal with the powers of government but directly with the rights of individuals, but which has never been attacked as unconstitutional on that ground.

There are presented in this controversy constitutional and political questions of immeasurable importance. The Constitution gave to the central government certain limited powers, and reserved to the states all other governmental powers not expressly prohibited to them. This rule of the division of powers was expressly laid down in the tenth amendment, but that amendment undoubtedly only states what was already quite clear from the Constitution itself. Have the people of the United States, by providing for amendments to the Constitution, delegated to Congress and the legislatures of three-fourths of the states, authority to give back to the states the powers vested in the federal government? And have the people of each state vested in the same bodies authority to transfer to the federal government the sovereign powers of that state without the consent of that state or its people? If these questions are answered in the affirmative it inevitably follows that the federal government can be abolished by constitutional amendment; and it follows with equal certainty that all of the powers reserved to the states (except the election by each state of two Senators) can be transferred to the central government, over the opposition of a quarter of the states, and with an affirmative vote of the legislatures, but not of the people, in the other three-fourths of the states. These are, of course, very extreme possibilities, but the point is that they *are* possibilities. If the Supreme Court holds constitutional the transfer of police power to the federal government which has been attempted, or declares that it has no jurisdiction of the question, public opinion alone will have to determine whether our present framework of government shall persist, or whether the federal and state governments are to be strengthened or weakened by the shifting of powers from one to the other by amendments to the federal Constitution.

On the other hand if the Supreme Court should declare the eighteenth amendment to be an unconstitutional attempt to transfer part of the sovereign power of the states to the federal government, we are at once confronted with the fact of a rigid federal Constitution, unalterable in its general scheme by amendment, and only subject to change by revolution, using that term to mean all extra-legal means of changing a constitution whether they be peaceful or violent. Is this possibility fraught with political danger, in such a period of change and readjustment as that upon which we are now embarked? It must, of course, be born in mind that a decision declaring it unconstitutional to transfer any of the sovereign powers of the states to the federal government by federal amendment, while it would prevent action by the federal government outside of the scope of its present powers, would not by any means condemn us to the strait jacket of past political theories. It would condemn us only to development by local action in each state. Uniformity of legislation throughout the country would have distinct advantages in many instances where Congress has at present no power to legislate. On the other side are to be weighed the advantages of an inalienable right to local control of local affairs.

The arguments against the transfer to the federal government by constitutional amendment of the powers originally reserved to the states, is the most fundamental ground of the attack levelled at the eighteenth amendment. But the argument based upon its character as legislation also deserves serious attention. Many persons who disapprove of that amendment in its present form would support it if it gave Congress the power to control or abolish the manufacture, sale and transportation of intoxicating liquors. Even though legislation in the form of an amendment be declared constitutional, these persons entirely disapprove of the policy of adopting amendments which have the force and effect of legislation. The grounds of this disapproval are obvious. When a power has been granted to Congress that body will in the exercise

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of such power be reasonably responsive to the public will; and if Congress has legislated under that power, such legislation can be repealed by a majority vote of that body in response to popular demand. But if an amendment, instead of giving certain new powers to the government, directly legislates as to the rights and duties of individuals, such legislation can only be repealed in the same way in which it was enacted—by constitutional amendment. It may very conceivably result that a decided majority of the electorate and of Congress desire the repeal of such legislation, and yet this may be prevented by the legislatures in a fraction over one-fourth of the states. Such a result would be most deplorable, and a constitutional amendment which may lead to such a situation is at least unwise, whatever be the final judgment as to its constitutionality. CHARLES K. BURDICK.

# They Must Have Espionage

HEREWITH follows what was done by the men of might in Passaic, N. J., when their espionage system was laid at their feet by Mrs. Fernandez of the United States Bureau of Education.

The mightiest man in wool in Passaic—and so in all of Passaic—is Mr. Forstman. When Mrs. Fernandez told him about the secret report which had been directed at her personal official affairs by Mr. Andres, the Wool Council's secretary, it grieved Mr. Forstmann.

Mr. Forstmann said that there must have been a mistake. He explained what he meant by a mistake. He explained to Mrs. Fernandez that the Wool Council's system of observation "was not intended for people like you."

But on the point of the abolishing of espionage Mr. Forstmann did not commit himself.

The next most eminent wool manufacturer in Passaic is Mr. Bahnsen. Mr. Bahnsen committed himself willingly. He said that he would ask for a meeting of the Wool Council to abolish espionage *except within the mills.*

Mrs. Fernandez then went to a meeting of the Passaic Board of Education. There are nine persons on this Board. The Passaic Daily Herald gives the occupations of four of them as follows:

Mr. Benson, the Chairman, is President of the Tide Water Oil Company and a stockholder in Passaic mills. Mr. Ehrhardt and Mr. Meader are heads of departments in Passaic mills. Mr. Breslawsky is a dealer in supplies for mills.

To this board Mrs. Fernandez read her report. Her statements regarding espionage were not met by any disproof.

Mrs. Fernandez returned to Washington. A month later her report was printed, saying that the "distrust" existing between separated groups in Passaic "has been intensified" by "a most unfortunate type of espionage system over the workers" and saying further that in the midst of such "distrust and suspicion" it was "out of the question" to expect any "successful growth" of the "social process" of "adult education." Or, to be more specific, it was "out of the question" in such circumstances to expect any "successful growth" of the very first phase in formal Americanization—namely, classes in English for immigrants.

So said Mrs. Fernandez in Washington. Meanwhile, in Passaic, Mayor McGuire had said something. He was about to announce a new member for the Board of Education. He announced Mr. Andres.

A few days later Mrs. Fernandez's report was quoted into the Passaic press. Mr. Andres rejoined:

"I know absolutely nothing about the system of 'espionage' to which Mrs. Fernandez refers."

Mrs. Fernandez thereupon went down into her handbag for the original copy—which Dr. Shepherd, Passaic Superintendent of Schools, had given her—of the Andres secret report on her conversations in the rooms of the Amalgamated Textile Workers, where Mr. Andres does not personally go. Mrs. Fernandez gave this original copy out for publication.

The results went the round of human temperament.

At once there emerged, for instance, a local champion of sheer disinterested true constitutional right. It was Mr. Hartt of the Passaic Daily News.

Mr. Hartt supported the sentiments which preceded and created our Bills of Rights. He supported the historic sentiments of this people in favor of a private life really private and unharried by the King's searchers, seizers, peepers, and general disturbers.

He, therefore, vigorously attacked the intimidating of anybody by the use of industrial secret service agents; and he equally vigorously attacked the intimidating of anybody by the use of special police "permits" for meetings; and he insisted:

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"It prevents a social understanding; and without a social understanding there can be no peace, no deep affection among the people, no prosperity worthy of the name."

Mr. Hartt was for hewing to the line of the Constitution, and to the line of the spirit of the Constitution, let the rights fall on whom they may. That was his temperament.

The Mayor was different. But he emerged, too. He emerged as the local champion of human love of home, wife, child, cat, and back-lot, against all strangers, no matter what they say. He rose and argued:

"Persons like Mrs. Fernandez are undesirable here. They are a foreign influence and might better be employed in minding their own affairs. There has been too much of this sort of thing. I won't stand for anybody trying to put us in a bad light."

Such was the Mayor's temperament. It linked itself to the temperament of the Chairman of the Board of Education.

At a meeting of the Board of Education the Chairman reproached the Superintendent of Schools earnestly. He reproached him for having raised the issue of "espionage" by giving the Andres report to Mrs. Fernandez. He said:

"You used poor discretion." "You did not use common sense." "It was a fool thing to stir up such a row."

Thus Mr. Benson put his finger on the crime. The crime was the row. And the criminal was the person who turned on the light.

We have now arrived at respectability. The Wool Council decided that the thing to do about espionage was to get the light turned off.

It began by making a public announcement regarding Mrs. Fernandez and her ways and words. This announcement was in the form of a full-page advertisement signed by Mr. Andres. Mr. Andres said that Mrs. Fernandez's first allusion to "espionage" in Passaic had been "too ambiguous" for him. Only later—when she had talked further—did he see that she was alluding to "the system conducted by the Industrial Council of Passaic Wool Manufacturers." Of course:

"If she has reference to people who have been employed by the manufacturers to detect crime and who are to keep the mills informed as to the development of destructive radicalism directed in the overthrowing of our Government and who are conspiring to seize by violence our industrial institutions, she is quite correct." Mr. Andres's point is:

Espionage? No. This thing is a good thing. It is against "destructive radicalism" which is "directed in the overthrowing," etc., "and who are conspiring," etc.

But then emerged the temperaments of the leaders of the Amalgamated Textile Workers. They are peaceful persons, running a union with an industrially revolutionary purpose peacefully.

Mr. Andres, in his advertisement, quoted from the preamble to their constitution. He quoted these words:

"The industrial and inter-industrial organization built upon the solid rock of clear knowledge and class-consciousness will put the organized working-class in actual control of the system of production, and the working-class will then be ready to take possession of it."

But anybody has a right to take possession of anything if he takes possession of it rightfully. Many a man has crowded another man out of a corporation, by the exercise of superior talents and of superior strategical controls, perfectly rightfully and lawfully. The question about the Amalgamated Textile Workers has to be: Are they in fact crowding the employer *un*lawfully, *un*peacefully?

Mr. Andres does not show that they are. A certain leader of the Amalgamated challenged him to a showing. This leader is Robert W. Dunn—a young man—only lately out of college—Yale, 1918. Mr. Dunn was allowed by Mr. Hartt to print a letter in the Passaic Daily News. Mr. Dunn said:

"May I publicly ask Mr. Andres to point out where and when the Amalgamated has been guilty of acts of 'destructive radicalism' and 'conspiracy to seize by violence our industrial institutions'?"

The test word is *"acts."* And the word "destructive"—by the way—ought again to be made to mean *destructive.* Where are the *destructive acts* of the Amalgamated? Where are its *acts*—whether *done* or *planned*—for seizing *anything* by *violence?*

The gentlemen who send reports out of the offices of the Amalgamated to Mr. Andres ought to know. Therefore Mr. Andres ought to know. But he does not know. The only things he specifies, the only things he details, are *words*—and words which in trade-union circles are just about as necessarily bloody as if Hiram Johnson should say that he was going to skin Herbert Hoover alive.

Nevertheless, the Passaic Wool Council—along with a multitude of other groups of owners throughout the country—must have espionage. On the day following Mr. Andres's advertisements the Passaic Wool Council met (Mr. Bahnsen absent) and "in general" "heartily approved" the advertisement. Also it announced that it would "lodge a protest" with the Bureau of Education at Washington "against the recent activities of Mrs. Alice Barrows Fernandez in the city of Passaic."

The protest was lodged. Two gentlemen came

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to Washington to lodge it. They did not deny that the Wool Council's system of observation, besides being patriotic, was in fact intended to prevent the Wool Council's employees from getting encouraged by the bolder spirits among them to strive for better conditions of labor and life. I say that they did not deny it. But, of course, in admitting it, they admitted it in their own vocabulary.

One of them, in Washington, said to Mrs. Fernandez:

"We maintain such a system [a detective system] because there are people coming in trying to stir up strife among the workers, making 90 per cent of our employees dissatisfied [*trying* to make them, he meant to say, I suppose]; and to protect ourselves we try to keep out the ten per cent as they come in. That is the thing you call espionage."

I pass over the resemblance alleged between Mrs. Fernandez and a dictionary. I hasten to note the resemblance between disloyalty and dissatisfaction.

A man goes into a Passaic wool mill. He sees women—women who are mothers, with little children at home—women who are pregnant, and far advanced in pregnancy—he sees them working at night—he sees them tending machines on regular night-shifts—an abomination so antiquated that the abolishing of it is one of the first entries in all schedules of proposed conservative international elementary labor legislation.

This man tries to make these women "dissatisfied." He tries to make their husbands "dissatisfied." He tries to make them join the one institution that strives day and night to give machine-tenders a voice that can be heard above the machines—the union. That is strife.

But the root of it is dissatisfaction. Oh, how increasingly grievous it is that people should be "dissatisfied." The cause of the dissatisfaction is becoming irrelevant. Dissatisfaction itself is becoming wrong. It is approaching disloyalty.

Mr. Andres in Passaic tells us that if a man spreads *disloyalty* in the mills, the Wool Council's system of observation will get him. One of the emissaries from Passaic to Washington tells us that if a man spreads *dissatisfaction* in the mills, the system will get him. In either case he will be got, and by the same system.

Why not bring on the idea now of "destructive dissatisfaction?"

The two emissaries from Passaic were in the end perfectly candid about dissatisfaction. In spite of all their efforts in their mills against "agitators" and in spite of all their systematic arrangements designed "to keep out the ten per cent as they come in," there was going to be a strike. Yes, sir. They wanted to tell the Commissioner of Education about it. They told him. A strike was coming. That was the seriousness of this bulletin in which the Commissioner had printed Mrs. Fernandez's report.

But how? Because the projected strike "is receiving impetus from your report."

But what then? What can the Commissioner do? Is the report unscientific? Is it inaccurate? It finds a system of secret observation. Does such a system exist?

"All we want to do," says one of the emissaries, "is to stop the damage."

"What is the damage?"

"Circulating the bulletins."

Really. Literally. These gentlemen came down to Washington to admit the existence of a system of secret observation and to object to its being called by its dictionary name of "espionage" and to ask the Government of the United States to stop calling it espionage and to stop saying it existed.

"It seems unfair," said one of them, "that we are likely to have a strike."

Then stop the espionage? No. Stop the bulletin.

The Commissioner of Education did not stop the bulletin. I conclude that he imagines that the purpose of his bureau is light—not propaganda. He refused to be a propagandist by suppression. At Passaic's request he had made a study of Passaic and had turned the light on. He refused to turn it off.

At that moment an American official was true to the purest theory of governmental Americanism. Between contending private factions, he was neutral.

The emissaries from Passaic retreated from Dr. Claxton and returned to Passaic. They had gained nothing. But they had conceded nothing. They returned to Passaic and to espionage.

Why *must* they have it?

WILLIAM HARD.

## In the Ruhr District

THE refusal of the British government to approve the French move in occupying more cities beyond the Rhine marks the first open breach in policy between the Allies. They have often, usually in fact, disagreed on important issues, but they have always gone to infinite pains to find some vague formula in a compromise solution which would offend no one among the Allies. This satisfied no one, but at least left each of them with hopes of being able to stake out his claims later. Sometimes these solutions showed consideration for the peoples involved. But other decisions which usually did not, were given in issues where one of the Allies had major interests and the others had none. Here the Ally directly concerned was usually

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left a free hand to apply his own solution. This disastrous laissez-faire was common in Franco-German relations during the armistice and a part of the peace negotiations. Marshal Foch had enough authority in the application of decisions to more than offset the checks of an Allied control. There were hundreds of questions of vital economic concern to the Germans where the French staff was left a free hand simply because neither the British nor ourselves had any direct interest in them. We preferred to keep out rather than dispute the prior claims of the French.

The upshot of this policy has been a series of unfortunate incidents much like the present one. French and German hatred has been kept kindled and effective steps toward common action to solve their economic difficulties have been blocked. The military cliques alone in both countries have profited by this tension.

The real gain in the present split on policy bebetween France and the Allies is that it marks the beginning of an effort to find a working solution for the Central European mess, apart from the nationalist agitation of both French and Germans. This is the only way out of the present disastrous tangle. It is better to look at facts as they are than to make efforts to keep alive the fiction that the Allies are inspired by a common purpose to enforce the Peace Treaty inch by inch, no matter what happens.

It will be easier now for the Allies to find a better new working basis for handling German affairs because in this Ruhr-Frankfurt incident neither the French nor the German governments has a very substantial case. The French have failed to convince the Allies of the military urgency of occupying more towns beyond the Rhine. The Germans, too, while having good reasons for protesting against an extension of French occupation, have so buried them in diplomatic chicane that they need not expect a very sympathetic hearing from the Allies. They are even less likely to receive this because they have by no means proved that the Ruhr situation warranted packing the coal fields with Reichswehr troops. It is a golden opportunity, therefore, for the Allies to decide an important issue on its merits and not be swayed by pressure from either of the two parties.

Neither the French nor German notes give a very clear statement of the considerations which warrant their move. Some of them are vague. Others are quarrelsome over non-essentials. Both parties show a willingness to quibble over differences in the text of the Peace Treaty. In so doing they at least manage to disguise their real intentions.

The German notes are not convincing. They labor to explain how Millerand's replies to their request to send more Reichswehr troops into the neutral zone were misinterpreted. This is difficult to understand because the French decisions were always No, and were accompanied with a threat to intervene if they were not respected. The Germans also created a legend of conflicting orders apparently originating in their Foreign Office to explain how it happened that the military commander in the Ruhr was given a free hand.

The French would apply the Treaty by punitive expeditions. Sometimes they proposed to advance as a precaution against further violations of the Treaty. Again they explained the step as necessary to ward off possible menace to the occupied area. Another variation less convincing was French concern for the safety of the innocent Ruhr strikers from the revenge of the ruthless Reichswehr, or more frankly, to protect the mines from destruction.

The driving force leading to the present break comes from the militarist group in both countries who have not yet given up their hold on the national policy of their respective countries. It is significant that the French recommendation at each phase of the German revolution was for military action. That the militarists in both France and Germany are able to swing so much influence on the Continent so shortly after the disasters resulting from their own past errors is an indication of general poverty in ideals and leadership. In France Foch increases in prestige as past blunders grow dimmer and victories larger. In Germany a rudderless people have turned a more tolerant ear to the old Ludendorff followers.

Despite the mortal blow the militarists received from the workers in Germany, they still have a finger in directing German policy. It is possible that the government would have carried out the agreements reached at Bielefeld and at Muenster with the workmen, and bloodshed would have been avoided, had it not been for more army meddling. Indications point that the move was probably led by General von Seckt, the successor of General Von Lüttwitz and by the Commander of the Ruhr Army, General von Watter. They once more induced the ebbing Ebert to approve of a punitive expedition against the strikers. It is no coincidence that Dr. von Haniel, directing the policy of the Foreign Office with large industrial interests in the region, was in full accord on such a move.

The military parties in both France and Germany could not have secured so complete a control were not both Millerand and Ebert political weather-vanes. Both have homely virtues and are

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hard workers. But both are, as Briand characterized Millerand, "like Londoners who pass their whole lives in a fog." They have repeatedly been easy marks for ambitious staffs and an excitable public.

The German militarists saw several gains from a military expedition in the Ruhr. It was first of all in line with previous policy in dealing with the Communists—first negotiate, gain the initiative, and then thrust. As disorder had died down in most parts of Germany this seemed a cheap way to win victory and perhaps repair something of their damaged prestige. They hoped too in such a move to knock the Communist leaders on the head and in this way reduce the possibility of later troubles. It is possible they were convinced that the French would not act alone. It is very likely, however, that they welcomed another act of aggression to fan the flickering flame of German patriotism.

The entry of Reichswehr troops into the Ruhr was the pretext rather than the reason for the French extending their occupation. The move on Frankfurt was proposed by them to the Allies fully a year ago. Since the renewal of the German revolution, each new phase of it has been given by the French as a change demanding a show of Allied force. They have constantly advocated joint action by the Allies involving occupation of both the Ruhr and the Saar, accompanied by a military demonstration showing the Germans that the already divided Allies were one in enforcing the Peace Treaty.

French policy toward Germany since the Peace Treaty was signed may be summarized:

1. To recognize no political change in Germany which might damage the solid moral responsibility of the German people to fulfill the terms of the Peace Treaty.

2. To favor groups working for separatism in Germany whether they be Independent Socialist or Catholic.

3. The corollary to this is to oppose vigorously any group working to knit the state closer together.

This policy explains French opposition to every party in turn which seemed likely to get control in Germany. It also throws light on the purpose behind the occupation of Frankfurt. This occupation seriously disorganized transportation. It comes simultaneously with an inspired press dispatch from Mayence that the people there are agitating for a separate Rhenish Republic. It is very possible, therefore, that the French have timed the Frankfurt move to be a wedge in a renewed separatist agitation.

Were this successful, the French would have realized at least most of their paper program. One German party after another has been crippled in the Revolution so that there is no group now powerful enough to unite Germany on any nationalist program in the near future.

But the real battle is being fought at St. Remo rather than on the Rhine. In the discussions between the French and British, the Germans are rather the irritants than a party in their conflicting policies. A compromise has already been reached which avoids an open breach and a graceful exit is open for both French and British due to the changed situation in the Ruhr. It is now evident that the French do not feel strong enough to enforce their claims alone. If they withdraw from Frankfurt it will be an acknowledgment of this fact, and will involve a change in method tending toward German disintegration. If they remain it will be in the hope of still realizing this end despite their concession in form to the Allies.

SANFORD GRIFFITH.

# *CORRESPONDENCE*

## Have We Recanted?

SIR: A story reached me yesterday from a source which I do not care to mention, to the effect that the editorial policy of the New Republic has been considerably modified for the past five weeks to suit the interest of the paper manufacturers, who threatened to cut off your paper supply unless you were properly complaisant. I take it for granted that the story is utter nonsense; and I mention it only because I think it may amuse you.

STANLEY WALLACE.

New York City.

## A Scholarship for Social Research

SIR: Your readers may be interested in three fellowships of an unusual kind offered by the New School for Social Research.

The purpose of these fellowships is to enable men or women of proved capacity for constructive work in the social sciences to devote their whole time for at least one year to research. The stipend is $2,000 per annum.

Applicants are requested to send the Committee letters stating their records, training and experience and describing as completely as feasible their subjects and programs of work. Printed or written evidence of the quality of the applicant's work and such other documents as he may think pertinent should accompany the letters. The last day for receiving applications will be May 1st, 1920. Successful applicants will be expected to be in residence at the New School during the period of tenure.

Further information may be had from and applications should be mailed to the undersigned at 465 West 23rd Street, New York City.

HORACE M. KALLEN,
WESLEY C. MITCHELL, Committee.

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# Books and Things

AT Hunsford, when the young ladies were sitting together, of a morning, they had now and then the honor of a brief visit from Lady Catherine de Bourgh, who "examined into their employments, looked at their work, and advised them to do it differently." So it has been in all ages. From near the beginning of "the long human day" one kind of critic has been advising authors and editors to do their work differently. Among the books burned at Alexandria there must have been, I am certain, a volume of sections from the Greek writers of prose, and this volume, I am equally certain, failed to content the Lady Catherines of that epoch. At Rome, too, in the latter years of the Empire, whenever a man of taste collected and copied out his favorite passages of Latin prose, other men of taste fell foul of him, doubtless, and told him that otherwise, and not so, he ought to have done his work. They reminded him that "Cicero's use of *numeri*" had been "disdained by strict Atticists like Caesar."

So it has been in all ages, and so it is today, although today the manners of Lady Catherine's successors are better than hers. Politely, I grant you, but nevertheless quite uselessly, have several reviewers told Mr. Logan Pearsall Smith how he ought to have made his Treasury of English Prose (Houghton Mifflin Company). I can't see what they gain by doing this, except their chance to display their familiarity with some kinds of English prose that Mr. Pearsall Smith has almost ignored (just as, later in this article, I hope to display mine). By his quotation from Keats, at the beginning of this Treasury, he has made his purpose known. "I had an idea," Keats wrote, "that a Man might pass a very pleasant life in this manner. Let him on a certain day read a certain page of full Poesy or distilled Prose, and let him wander with it, and muse upon it and reflect from it, and dream upon it: until it becomes stale.—But when will it do so? Never—When a man has arrived at a certain ripeness in intellect any one grand and spiritual passage serves him as a starting-post towards all the 'two-and-thirty Palaces.' How happy is such a voyage of conception, what delicious, diligent indolence." In no way could Mr. Pearsall Smith have given us a clearer notion of his object. Pages of distilled prose. A book to muse upon and to dream over. That's what he was after.

And that is what he has given us. His Treasury is a book of beauty, a book to keep at one's bed's head, a book to dip into, to travel with, to reread. It goes back to Chaucer, it ends with Mr. George Santayana, who will certainly be known to later ages as one of the great prose writers of our day. Mr. Pearsall Smith finds room in his slender volume for Bacon, Shakespeare, Donne, Sir Thomas Browne, Milton, Taylor, Halifax, Swift, Coleridge, Landor, De Quincey, Shelley, Carlyle, Newman, Emerson, Pater, Henry James, Stevenson, Shaw, H. G. Wells. Of course his Treasury has its queernesses. Every anthologist seems somehow queer to every reviewer. I, for example, cannot begin to understand the inclusion of Samuel Butler and Woodrow Wilson in a Treasury which does not admit Dryden or Goldsmith or George Meredith or William James.

I find myself doing, in short, just what I've complained of in other reviewers, and forgetting to thank Mr. Pearsall Smith for the reading and the taste which have given us this Treasury.

A Treasury, Mr. Pearsall calls it, please observe, and not The Treasury, or The Golden Treasury, of English Prose. No one knows better than he that in the house of prose there are many mansions. No one knows better that a Treasury of Prose, except when it is as long as Henry Craik's four volumes, must be a series of extracts, whereas an anthology of verse may be, and if the anthologist knows his business will be, a collection of wholes. It is easier to represent the world of flowers, the wild ones and the others, than the avenues and groves and forests. Perhaps some Greek was thinking of some such difference when he invented the word anthology.

With all this in mind it is nevertheless impossible to read Mr. Pearsall Smith's Treasury through without wishing that he would do us another book, not of imaginative prose this time, but of prose in the other traditions, the traditions of plainness, sobriety, austerity, irony, homeliness, russetness. Such a range of choice need not be narrow, the collection of things chosen need not be monotonous. In such a Treasury there would be a place for the letter from Porson, written just after he had resigned his fellowship because he would not take orders, to Postlethwaite, who had suggested that Porson become a candidate for the Greek professorship at Cambridge. I quote the letter as it is printed in Watson's Life of Porson: "The same reason which hindered me from keeping my fellowship by the method you obligingly pointed out to me, would, I am greatly afraid, prevent me from being Greek professor. Whatever concern this may give me for myself, it gives me none for the public. I trust there are at least twenty or thirty in the University equally able and willing to undertake the office; possessed, many, of talents superior to mine, and all of a more complying conscience. This I speak upon the supposition that the next Greek professor will be compelled to read lectures; but if the place remains a sinecure, the number of qualified persons will be greatly increased. And though it were even granted that my industry and attention might possibly produce some benefit to the interests of learning and the credit of the University, that trifling gain would be as much exceeded by keeping the professorship a sinecure, and bestowing it on a sound believer, as temporal considerations are outweighed by spiritual."

Into such a Treasury, although nobody would call the passage sober or austere, I believe I'd put Whistler's remarks upon the notion that our art will be finer if our lives are virtuous: "Let us reassure ourselves, at our own option is our virtue. Art we in no way affect. A whimsical goddess, and a capricious, her strong sense of joy tolerates no dullness, and, live we never so spotlessly, still may she turn her back upon us. As, from time immemorial, she has done upon the Swiss in their mountains. What more worthy people! Whose every Alpine gap yawns with tradition, and is stocked with noble story; yet, the perverse and scornful one will none of it, and the sons of patriots are left with the clock that turns the mill, and the sudden cuckoo, with difficulty restrained in its box. For this was Tell a hero! For this did Gessler die!"

Yes, there are many possible treasuries of English Prose, of most of which Mr. Pearsall Smith would be a perfect editor. There is one, however, which he must not edit—a collection of formally beautiful passages from living writers, from Max Beerbohm, Arthur Machen, C. E. Montague, Virginia Woolf—for into such a treasury he, alone among editors, would not admit certain pages that ought to be there, pages from Trivia, by Logan Pearsall Smith.

P. L.

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# Chekhov's Detachment

*The Chorus Girl, and other stories, by Anton Chekhov. Translated by Constance Garnett. New York: The Macmillan Co.*

SINCE 1914 most of us have learned something about the mysticism and credulity of human nature. It is part of Chekhov's genius that he was born with this knowledge: his world is a world in which our universal and persistent flub-dub cannot survive. He does not expose fraud. He does not muck-rake evil. He does not indict mysticism, credulity and the will-to-thimblerig. He simply combines human beings so that the pots of brass and the pots of clay swim together and try each other out. And in this world Chekhov is no more a partisan of heart or of head than a good surgeon is the partisan of one human organ against another. ("I cannot believe the liver is at fault, the dear good faithful liver! I refuse to apply the knife to an organ that is such an admirable servant of mankind"). Chekhov applies the knife, which is his eye, to everyone alike. And in this critical insight is one of his distinguishing characteristics.

Sentimentalists declare that the result of such critical insight is hopelessness. They cannot bear to see Chekhov bring to light the permutations and combinations of human silliness, weakness and wickedness, operating in a world where even the reverse of these qualities is by no means certain to bring happiness or dignity. But it is the man whose hope is willing to indulge illusions that is discouraged by such an art as Chekhov commands. Who wants to hope for oneself or anyone else, if hope has no better basis than that which the public actions of 1914—1920 disclose? Our generation now knows, by demonstrations that are plastered all over the billboards of public consciousness, that humanity works on a tiny margin of decency and that a few mistakes here and there must mean that decency is to be sacrificed and the barbarian put into control. To hope extravagantly in such connection is to gamble extravagantly. And the man who gambles extravagantly is an economic sentimentalist. He goes it blind. The man of critical insight declines to go it blind. He sends his point of intelligence ahead of him, as far as he can and as well as he can. And Chekhov's stories illustrate the discoveries that are possible in this mood of intelligence.

But, the man who wills to believe may retort, if you cannot jump the chasm without believing the impossible, why not believe the impossible? Chekhov's heart is never set on discouraging such leaps in the dark. All he does is to show that (a) you may refuse to jump a chasm that was in reality very narrow, (b) you may nerve yourself to jump a chasm that could only have been jumped with nerve, (c) you may nerve yourself to jump a chasm too wide to be jumped anyway, (d) you may jump a chasm and break your neck when a little inspection would have revealed a convenient ladder, (e) you may flunk jumping the chasm, meet an heiress on the wrong side immediately afterward, marry her and later run for president of the United States as a direct result of your lack of nerve. Also, poor fellow, you may be elected president and so in the end receive the wages of sin.

Does this detachment of Chekhov's amount to a refusal to address the purposeful man? Is it the beginning of that superciliousness in regard to conduct which ends in art for art's sake, and perversity and anti-social isolation? I can see nothing of this fine sterility in Chekhov. He declines to hoax the purposeful man, that is all. He has in view the evidence of life, no matter what his own prepossessions, and he throws that evidence on the screen for what it is worth. So, Darwinian himself, it is the Darwinian doctor who seduces the girl in My Life and who prates so highly at the same time. In that same story, My Life, it is practically impossible to tell what Chekhov thinks and feels about Tolstoyan simplicity. The Russian peasant is depicted in that story with a non-idealism which at one time seems like the regular bourgeois antipathy. But only the man unduly purposeful is likely to be fooled by this cruel candor. Soon Chekhov shows another side of the peasant. He is not committeed to the Tolstoyan view or the bourgeois view. He relates both views to his object, the portrayal of Poloznev, the son of an architect who became a house-painter and disgraced his family and yet made a new place in this inelastic world.

This same capacity for holding off his own prepossessions, his own desires, distinguishes every story in The Chorus Girl. When Ognev leaves the house of his kind hosts at nightfall, everything invites emotion. "It was warm and still in the garden. There was a scent of the mignonette, of the tobacco-plants, and of the heliotrope . . ." And Vera, Verotchka, moves toward him in the shadow, to make her thrilling confession of love. What happens to Ognev, the excellent statistician? It is no malice in Chekhov that admits "the sad, warm, sentimental mood induced by leave-taking and the home-made wine suddenly vanished, and gave place to an acute and unpleasant feeling of awkwardness." It is no malice, either, that portrays Ognev returning late in the evening to haunt the garden. "There was no mist by then along the road or in the garden, and the bright moon looked down from the sky as though it had just been washed; only the eastern sky was dark and misty . . . Ognev remembers his cautious steps, the dark windows, the heavy scent of heliotrope and mignonette. His old friend Karo, wagging his tail amicably, came up to him and sniffed his hand." The cerebral gentleman was three hours too late. Cerebral gentlemen often are. And this is Chekhov's Au Clair du Lune.

But his candor is not always hard to bear. In A Father he portrays a wonderful old man cadging from his son and play-acting before his son to impress his mistress, yet at heart a broken, penitent, incorrigible old rapscallion. Rothschild's Fiddle has the same tenderness. Yet tenderness does not induce Chekhov to give the stupid village undertaker fine perceptions. The story is marvelously faithful to the dumbness and numbness of the old peasant. It is only as a last gesture that the undertaker gives his fiddle to the miserable Jew. The sources of that gesture, deep down under the hard caked earth of the peasant, Chekhov dispassionately reveals.

In A Gentleman Friend and in Bad Weather there is a touch of flippancy. The gentleman friend is a Jewish dentist who once lavished money on a girl in a cabaret. She is shabby and hard up and comes to his office to "touch" him. He does not recognize her. She loses her nerve, pretends she has a toothache, is put in the chair and has to pay her last cent for having a sound tooth extracted. Bad Weather is a similar bit of irony. These are the only O. Henry trick-stories in the book. The others have what O. Henry usually lacks—the atmosphere of life and a view of the whole world. The close particularity of the stories intensifies the point of view.

To read Chekhov is to come in contact with a man of great sensitiveness and witty subtleties yet a man of wide sanity and plain humane feeling. It is not hard in literature to find men of detachment who are really bored with

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common people and contemptuous of the common lot. These men show their detachment in their solitude and their single eye-glass, their spats and their sneer. But Chekhov sits in no glass-cage or bone-tower of detachment. He is detached only in the sense that a watch is detached which goes on working when it is upside down, or that a lamp on shipboard is detached which burns with straight flame when the ship is rolling half-way over. This is the detachment that remembers fallibility even in the sharpest spasms of assertion. And of course this is in itself a faith—a faith in evidence, a faith in objective methods, a faith in intelligence. Not much of a faith? Well, the other sort of thing, riding the world from one Holy War to another since the beginning of manslaughter in 1914, has not proved a startling success.

F. H.

# Sir Oliver Lodge on Life After Death

*The Survival of Man, a Study in Unrecognized Human Faculty, by Sir Oliver Lodge, LL.D., D.Sc., F.R.S. New York: George H. Doran Co.*

WHEN a scientist of the standing of Sir Oliver Lodge stakes his reputation on the claim to have experimental proof that the dead still live; when crowds of men and women flock to his lectures, and mediums of all sorts do a thriving trade with the curious and heart-hungry, it is time for reasonable men to take thought about their attitude towards "psychic" phenomena.

The first thing they need to do is to be on their guard against their own emotional bias. Many people are instinctively repelled by the thought of seeking to enter into communication with the dead. It seems to them a profane intrusion upon the peace of the grave. They cannot imagine that they themselves should want to communicate after death, even were it possible. The necromancy of the professional medium disgusts them. They shrink from the morbidity of automatic utterances in trances.

It is well to realize at once that Sir Oliver Lodge stands at the opposite pole of these feelings. To him there is nothing antecedently improbable about survival. Its reality has been an age-old human belief. It is wholly and simply a question of evidence. Why not, then, try to find out?

There is nothing of bad taste about such attempts. All that is necessary is an open-minded willingness to explore what looks like a hitherto neglected human faculty. There are phenomena which claim to be evidential. Why not test and verify that claim by careful experimental investigation? Why not, if the results are positive, seek to enlarge the scope of this faculty and to develop its technique? It is no question of disturbing the peace of the dead. Why not assume, as a working hypothesis, that they are as eager to communicate with us as we are with them? It is a practical problem to be solved, and we have to set about it in a business-like, scientific way. We shall only hamper ourselves if we think of the spirit-world as either a heaven or a hell, and of the spirits of the departed as like the sugary angels of conventional piety. No, the whole atmosphere of the relationship is purely and intensely human, sometimes all-too-human. At its best, it has much of the intimacy of affection—recollect the Voice in J. M. Barrie's little war-play; at its worst, it is like a casual conversation over a telephone, broken by buzzings and disconnections. There is nothing specifically religious, mystical, or exalted about it.

But in so far as the investigation is successful, science is once again proving herself a benefactress to humanity, turning blind faith into reasoned assurance, robbing grief of its sting.

But if there is no valid moral or religious objection to such researches, is there perhaps a scientific one? The vast majority of Sir Oliver's scientific brethren think there is. To them it is unscientific to investigate these phenomena and doubly unscientific to entertain the survival-hypothesis as worthy of being tested at all. Such critics have a simple and sweeping formula. All mediums are frauds. All their customers are dupes. Sir Oliver himself is a self-deluded prophet, a blind leader of the blind. But is the case quite so simple? Granted that many professional mediums have been detected in fraudulent practices, is it quite safe to generalize? You might as well argue that because many antiques are fakes, therefore none are genuine. The problem, surely, is to sort out the genuine phenomena from the counterfeit.

Nor is it only a question of guarding oneself against conjuring tricks. Recent study of the "subconscious," especially in cases of so-called "dissociation of personality," have abundantly shown that the subconscious may manifest itself in behavior of which the moral consciousness is utterly unaware. The psychical researcher should certainly be an expert in psychiatry, even more than an expert in physics. Meanwhile, the "scientist" who dogmatizes on these matters without an exhaustive first-hand acquaintance with the phenomena, under laboratory conditions controlled by himself, sins as much against the spirit of free inquiry, as ever did theologian. Let us frankly acknowledge that there is such a thing as scientific orthodoxy—a fashion of suspiciousness against any phenomena suggestive of the supernatural, which is a relic of the ages of struggle through which science has won its emancipation from superstition disguised as religion.

And so for the real issue: Has Sir Oliver made out a case for survival or has he not? What is his evidence? Omitting, for brevity's sake, the phenomena of materializations and apparitions, let us confine ourselves to "communications" in the strictest sense, i. e., to automatic writing and automatic speech, be the latter trance-utterance of a medium or inner voice heard by oneself. Here, then, are our "facts." These facts are *words,* spoken or written—nay, spoken or written by some*body*. This is the one thing we are sure of: the body which does the speaking or writing.

Now, words have meanings and they express thoughts. Thus our facts raise two sorts of questions. First, is what the words mean true? And, secondly, who is it that expresses his thoughts through the writing and speaking of this body? Note that the body may be my own, though I may not recognize the thoughts expressed as mine, or the facts alleged as known to me. Thus automatic script sometimes contains statements concerning matters which, to all appearances, are beyond the writer's and the sitter's knowledge, but which are subsequently found to be true. Add that the script names a "spirit" and claims that the information comes from him; that he is the real writer, using the living body as his instrument. Telepathy between the living being, on the facts, excluded, does not the truth of the information given corroborate the truth of the spirit's assertions concerning himself?

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This is the type of evidence and argument on which Sir Oliver chiefly relies. Testimony concerning a matter of fact, unknown to the living concerned in the experiment, is given through automatic script or utterance, and subsequently verified. Its truth then supplies the basis for crediting the spirit-communicator's further statements concerning his own identity. If the information given cannot come from the automatist's mind; if it cannot come, by telepathy, from the sitter, or from any other "incarnate" mind, then it must come from the self-confessed "discarnate" spirit.

It is, thus, an argument by elimination, the strength of which depends on the conclusiveness with which the negatives can be established. Criticism of it, to be effective, must show by counter-experiment that the information on which everything hinges, is known to one of the incarnate minds, though too completely forgotten for anything but automatic revelation of it. This is obviously a difficult matter, and in practice often impossible. But the more often we succeed, the less is the probability that our failure to do so in any given case, should count as evidence in favor of spirit-hypothesis.

Hence it is evident that what is urgently required, and what Sir Oliver himself has not sufficiently done, is to make a far more thorough study of the resources of the "subconscious," which, in this connection, is simply a technical term for the fact that our bodies register, and are capable of expressing in automatic gesture and utterance, countless experiences of which our official "consciousness" knows nothing. Every one of us perceives vastly more than he notices, and knows much more than he can voluntarily remember. There are "unrecognized faculties" here, the exploration of which may prove the spirit-hypothesis to be unnecessary.

There is, however, a group of psychic phenomena, of which Sir Oliver makes comparatively little, but which is harder than any other to account for except on a spirit-hypothesis. This group consists of the so-called "cross-correspondence" phenomena, i. e., cross-references between the scripts of two or more automatists, writing in distant places without knowledge of each other. These phenomena certainly strain the hypothesis of telepathy or subconscious knowledge to the breakingpoint.

On the other hand, this sort of spirit-activity, if such it is, offers least evidence of the personality of the spirit, and least satisfaction for the craving for personal intercourse with a departed friend.

All in all, Sir Oliver is right in claiming for psychical research a fair field and no favor (or, rather, no disfavor). But it is difficult for most students of the evidence to share his conviction that the spirit-hypothesis has been established. And it seems very clear that no form in which it is at present likely to be established, promises much gain either for religion or for the consolation of sorrowing love.

R. F. A. H.

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